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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* RANDALL LEE CARTER,  
TRICIA PATRICE SILVERTON,  
and ROBERT J. BERKI

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Appeal 2008-5212  
Application 10/797,394  
Technology Center 1700

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Decided:<sup>1</sup> May 29, 2009

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Before, BRADLEY R. GARRIS, TERRY J. OWENS, and  
MICHAEL P. COLAIANNI *Administrative Patent Judges*.

COLAIANNI, *Administrative Patent Judge*.

DECISION ON APPEAL

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the Decided Date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

This is a decision on an appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1, 14, 18, 19, 33, and 34. Claims 2 through 13, 15 through 17, 20 through 32, and 35 through 39, the other claims pending in this application, have been withdrawn from consideration. We have jurisdiction pursuant to 35 U.S.C. § 6.

We AFFIRM.

#### STATEMENT OF THE CASE

The subject matter on appeal is directed to a composition.

Claim 1 is illustrative:

1. A composition, comprising

a polyorganosiloxane, and

an admixed sterically hindered amine light stabilizer

wherein the polyorganosiloxane is free from alternating cyclic hydrocarbon residues, and the hindered amine light stabilizer comprises a pendant siloxane chain.

As evidence of unpatentability of the claimed subject matter, the Examiner relies upon the following references:

Karrer (as translated)	WO 96/16110	May 30, 1996 <sup>2</sup>
Tsujimoto	US 6,013,729	Jan. 11, 2000

Appellants seek review of the following rejection:

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<sup>2</sup> Our reference to Karrer is to the translation thereof prepared for the U.S. Patent and Trademark Office by FLS, Inc. (PTO 06-5929, August 2006).

Claims 1, 14, 18, 19, 33, and 34 under 35 U.S.C. § 103(a) as unpatentable over the combined disclosures of Tsujimoto and Karrer.

Appellants argue the claims in four groups: (1) claims 1 and 33; (2) claim 14; (3) claims 18 and 19; and (4) claim 34. (App. Br. 8-14 and Reply Br. 4-9). With respect to claim group (1), Appellants separately argue independent claim 1. (App. Br. 8-12 and Reply Br. 4-5 and 8). Appellants state that "[i]ndependent claim 33 is submitted to be allowable for the same reasons as give[n] above for claim 1." (App. Br. 12). With respect to claim group (2), Appellants argue dependent claim 14, which is the only claim in this group. (App. Br. 11-12 and Reply Br. 6). With respect to claim group (3), Appellants separately argue dependent claim 18. (App. Br. 13 and Reply Br. 6). Appellants state that "[c]laim 19 depends from claim 18 and is also submitted to be separately patentable." (App. Br. 13 and Reply Br. 7). With respect to claim group (4), Appellants argue dependent claim 34, which is the only claim in this group. (App. Br. 13).

Accordingly, we address Appellants' arguments as follows:

- 1) claim 1 for claim group (1);
- 2) claim 14 for claim group (2);
- 3) claim 18 for claim group (3); and
- 4) claim 34 for claim group (4).

## ISSUES

### *Claim Group (1)*

Appellants do not dispute the Examiner's determination that the combined disclosures of Tsujimoto and Karrer teach a composition having

all of the features recited in claim 1, except for the claimed polyorganosiloxane. (*Compare* Ans. 3-6 with App. Br. 8-14 and Reply Br. 4-9). Nor do Appellants dispute the Examiner's reason for combining Tsujimoto and Karrer. (*Compare* Ans. 3-4 with App. Br. 8-14 and Reply Br. 4-9).

Appellants argue that Tsujimoto is not analogous art because it is not in the same field of Appellants' endeavor and because it is not reasonably pertinent to Appellants' problem. (App. Br. 11).

In addition, Appellants argue that "[t]he elastomer of Tsujimoto et al. is a hydrocarbon rubber crosslinked by siloxanes using a hydrosilylation catalyst. One skilled in the art would realize that a hydrocarbon polymer crosslinked by siloxanes does not constitute, and is not analogous to, a polyorganosiloxane." (App. Br. 10). Appellants argue that "the polyorganosiloxanes of the present invention are silicones crosslinked with silicones. One skilled in the art would not consider the hydrocarbon polymer based resins of Tsujimoto et al. to be equivalent to polyorganosiloxanes as contemplated by Appellants . . ." (Reply Br. 5).

Appellants also argue that "the Tsujimoto et al. composition of hydrocarbon polymer crosslinked with a minor amount of siloxane does not have the same structure as a polyorganosiloxane. Nor is there any evidence that the Tsujimoto et al. composition and Appellants' claimed composition are in any way functionally equivalent or interchangeable." (Reply Br. 5). In addition, Appellants argue that

Appellants have explained in the specification why the present invention is unexpectedly useful as a light bulb coating material. Referring to paragraphs [0008]-[0009] the specification states:

Historically, HALS were not suggested for use with silicones because of the concern that amines will poison a cure catalyst and thus inhibit the crosslinking reaction. Additionally, it has been believed that nonoxidative cycloreversion rather than oxidation is the predominant mode of polyorganosiloxane degradation at elevated temperatures. A HALS is an antioxidant. Cycloreversion is not influenced by oxygen. Hence, it has been believed that antioxidant HALS would be ineffective with polyorganosiloxanes.

Surprisingly, it has been found in accordance with the present invention that organopolysiloxane compositions can be stabilized with a HALS, or a modified HALS. While applicants do not intend to be bound by the following explanation, it is believed that both cycloreversion and oxidation occur simultaneously at elevated temperatures. However, oxidation appears to be the predominant mechanism at temperatures greater than 185°C. in an atmosphere containing oxygen. These conditions are the usual conditions for use of polyorganosiloxanes as a bulb coating.

(Reply Br. 8).

Therefore, the issues are as follows: (1) Have Appellants shown reversible error in the Examiner's finding that Tsujimoto is analogous art? (2) If Tsujimoto is analogous art, then have Appellants shown reversible error in the Examiner's finding that Tsujimoto teaches a composition having a polyorganosiloxane as required by claim 1? and (3) If Tsujimoto is analogous art and teaches a composition having a polyorganosiloxane such that the combined teachings of Tsujimoto and Karrer would have rendered obvious the claimed composition having a polyorganosiloxane and hindered amine light stabilizer, then are Appellants' arguments and evidence sufficient to rebut the Examiner's prima facie case of obviousness? We decide these issues in the negative.

*Claim Group (2)*

With respect to claim group (2), the Examiner determines that Tsujimoto's "crosslinking agent . . . meet[s] the" the composition having a polyorganosiloxane as required by claim 1. (Ans. 4).

Appellants argue that "[t]he arguments presented above with respect to claims 1 and 33 are reiterated herein." (App. Br. 12). In addition, Appellants argue that "the Tsujimoto et al. composition results from the hydrosilylation of a (pre-crosslinked) non-silicon containing alpha-olefin hydrocarbon copolymer with an organohydrogensiloxane. The result is a completely different composition than that of Appellants' claim 14." (App. Br. 12). In addition, Appellants argue that

Tsujimoto et al. teaches the reaction product of a hydrocarbon rubber with a linear organohydrogensiloxane crosslinker. (Tsujimoto et al., col. 5). However, the linear organohydrogen siloxane crosslinkers are not vinylsiloxanes. The hydridosiloxanes (col. 5) possess monovalent R groups, which can be alkyl, alkoxy, phenyl, aryl, or aryloxy. The non-cyclic R groups are saturated, not alkenyl. Vinyl groups are not included in the listing of possible groups. There is a vast structural, and chemical difference -H, -C<sub>n</sub>H<sub>2n+1</sub>, alkyl groups, alkoxy groups, etc. on the one hand, and -CH=CH<sub>2</sub> vinyl groups on the other hand. (Reply Br. 6).

Also, Appellants argue that Tsujimoto's vinylsilanes do not meet the recited vinylsiloxanes. (Reply Br. 6).

Thus, the issue is: Have Appellants shown reversible error in the Examiner's determination that Appellants' polyorganosiloxane formed from the ingredients recited in claim 14 is not patentably different from Tsujimoto's crosslinking agents? We decide this issue in the negative.

*Claim Group (3): Claim 18*

The Examiner determines that Tsujimoto's "crosslinking agent . . . meet[s] the" the polyorganosiloxane feature as required by claim 1. (Ans. 4).

Appellants argue that "[t]he arguments presented above with respect to claims 1 and 33 are reiterated herein." (App. Br. 13).

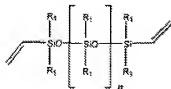
Appellants also argue that

As can be seen, the vinylsiloxane does not include alkoxy groups. The composition of Tsujimoto et al. is water cured and requires hydrolysable groups (i.e., alkoxy groups), whereas the composition of the present invention is heat cured and does not include hydrolysable groups.  
(App. Br. 13).

In addition, Appellants argue that "none of the R groups is disclosed as being a vinyl group. Accordingly, the linear organohydrogen siloxanes of Tsujimoto et al. are not vinylsiloxanes or equivalent thereto. Also, as stated above, the vinylsilanes of column 8 of Tsujimoto et al. are not vinylsiloxanes or equivalent thereto." (Reply Br. 7).

Appellants also argue that

Moreover, the recitations in claim 18 are directed to a vinylsiloxane fluid having a specific structure:





which is neither disclosed nor suggested by Tsujimoto et al., nor does Tsujimoto et al. disclose the recitations directed to the value of  $n$  such that the viscosity of the composition falls within a range of between about 100 centipoise and about 200,000 centipoise at 25°C.  
(Reply Br. 7).

Thus, the issue is: Have Appellants shown reversible error in the Examiner's finding that Appellants' polyorganosiloxane formed from the vinylsiloxane fluid recited in claim 18 is not patentably different from Tsujimoto's crosslinking agents? We decide this issue in the negative.

Claim Group (4): Claim 34

The Examiner determines that Tsujimoto's "crosslinking agent . . . meet[s] the" polyorganosiloxane feature as required by claim 1. (Ans. 4).  
Appellants argue that

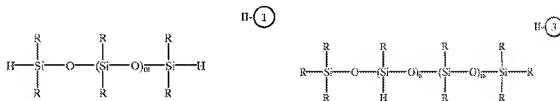
the Tsujimoto et al. composition is moisture cured. The composition of the present invention is cured by heat. There is nothing in Tsujimoto to suggest Appellants' heat curing composition. Tsujimoto et al. requires the presence of hydrolysable silane groups (e.g. alkoxysilane groups) to facilitate crosslinking with water. The composition of the present invention does not require alkoxy groups and is not moisture cured.  
(App. Br. 13).

Thus, the issue is: Have Appellants shown reversible error in the Examiner's determination that Tsujimoto teaches a composition that is cured by heating as required by claim 34? We decide this issue in the negative.

RELEVANT FINDINGS OF FACT (FF)

1. The Specification discloses that "[t]he present invention relates to a stabilized polyorganosiloxane composition. More particularly, the invention relates to a process of making a coating . . ." (Spec. ¶ [0002]). In other words, Appellants' field of endeavor is directed to a coating composition. Appellants' Specification, in a preferred embodiment, states that the "polyorganosiloxane is a methyl silicone composition. The polyorganosiloxane of the composition can consist of blocks of the general formula  $[(CH_3)_2SiO]$ ." (Spec. ¶ [0011]). In addition, the Specification discloses that the preferred vinylsiloxane fluid has the repeating unit  $[(R_1)_2SiO]$ , where this unit is known to be non-cyclic and where  $R_1$  may be an alkyl radical having one carbon atom, which is known as a methyl group and has the formula  $-CH_3$ . (Spec. ¶¶ [0011]-[0013] and p. 15). The Specification also discloses that the organohydrogensiloxane crosslinker may have the repeating unit  $[(R_2)_2SiO]$ , where  $R_2$  may be an alkyl radical having one carbon atom, which is known as a methyl group and has the formula  $-CH_3$ . (Spec. ¶¶ [0014]-[0016] and p. 15). In other words, the Specification discloses that the non-cyclic, vinylsiloxane fluid and organohydrogensiloxane crosslinker may have the repeating unit  $[(CH_3)_2SiO]$ .
2. The Specification discloses that it was believed that "HALS were not suggested for use with silicones because of the concern that amines will poison a cure catalyst and thus inhibit the crosslinking reaction" and that "[c]ycloreversion is not influenced by oxygen." (Spec. ¶

- [0008]). In addition, the Specification discloses that "[t]he HALS . . . may be admixed prior to curing or subsequent to curing to form the composition of the present invention." (Spec. ¶ [0018]).
3. Tsujimoto teaches "a novel postcurable, moisture-curable elastomer . . . composition," which may be used in, *inter alia*, electric wire coverings. (Tsujimoto, col. 1, ll. 5-25). Thus, Tsujimoto's field of endeavor is directed to coating compositions. Tsujimoto teaches its elastomer composition is cured in boiling water at 100° C. (Tsujimoto, col. 10, ll. 28-41). In other words, Tsujimoto cures its elastomer composition via heated water.
4. Tsujimoto teaches (col. 5, ll. 10-23) the following two different structures, which are known to be silicone structures, each functioning as a crosslinking agent in Tsujimoto's elastomer composition:



Tsujimoto states that the R group "preferably is a methyl group," which is known as -CH<sub>3</sub>, and that "m varies from 1 to 100," where the repeated structural unit m is known to designate the length of the polymer chain. (Tsujimoto, col. 5, ll. 40-47). In other words, Tsujimoto teaches that its crosslinking agents may be methyl silicone compositions and have the repeating unit [(CH<sub>3</sub>)<sub>2</sub>SiO]. (Tsujimoto, col. 5, ll. 1-48).

## PRINCIPLES OF LAW

“A prerequisite to making this finding [regarding the scope and content of the prior art] is determining what is ‘prior art’ . . . this determination is frequently couched in terms of whether the art is analogous or not, *i.e.*, whether the art is ‘too remote to be treated as prior art.’” *In re Clay*, 966 F.2d 656, 658 (Fed. Cir. 1992) (*quoting In re Sovish*, 769 F.2d 738, 741 (Fed. Cir. 1985)). “Two criteria have evolved for determining whether prior art is analogous: (1) whether the art is from the same field of endeavor [as Appellants’], regardless of the problem addressed, and (2) if the reference is not within the field of the . . . [Appellants’] endeavor, whether the reference still is reasonably pertinent to the particular problem with which the . . . [Appellants were] involved.” *Clay*, 966 F.2d at 658-59.

“[W]here the prior art gives reason or motivation to make the claimed [invention] . . . the burden (and opportunity) then falls on an applicant to rebut that *prima facie* case. Such rebuttal or argument can consist of . . . [any] argument or presentation of evidence that is pertinent.” *In re Dillon*, 919 F.2d 688, 692-93 (Fed. Cir. 1990) (*en banc*) (emphasis omitted).

“Where a product-by-process claim is rejected over a prior art product that appears to be identical, although produced by a different process, the burden is upon the applicants to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product.” *In re Marosi*, 710 F.2d 799, 803 (Fed. Cir. 1983).

It is well settled that objective evidence must be factually supported by an appropriate affidavit or declaration. *See In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984). “[A]ppellants have the burden of explaining the

data in any declaration they proffer as evidence of non-obviousness."

*Ex parte Ishizaka*, 24 USPQ2d 1621, 1624 (BPAI 1992).

Opinion evidence in a declaration has little value without factual support. *In re Beattie*, 974 F.2d 1309, 1313 (Fed. Cir. 1992). "Moreover, an applicant relying on comparative tests to rebut a prima facie case of obviousness must compare his claimed invention to the closest prior art." *De Blauwe*, 736 F.2d at 705.

## ANALYSES AND CONCLUSIONS

### *Claim Group (1): Claim 1*

*Issue (1): Have Appellants shown reversible error in the Examiner's finding that Tsujimoto is analogous art?*

Appellants argue that Tsujimoto is not analogous art because, *inter alia*, it is not in the same field of Appellants' endeavor. (App. Br. 11). We disagree. Appellants' specification discloses that "[t]he present invention relates to a stabilized polyorganosiloxane composition. More particularly, the invention relates to a process of making a coating . . ." (FF 1). In other words, Appellants' field of endeavor is directed to coating compositions. (FF 1).

Tsujimoto teaches "a novel postcurable, moisture-curable elastomer . . . composition," which may be used in, *inter alia*, electric wire coverings. (FF 3). Thus, Tsujimoto's field of endeavor, like Appellants', is directed to coating compositions. (FF 1, 3).

Therefore, in view of the fact that Tsujimoto and Appellants are in the same field of endeavor (i.e., coating compositions), we find that Tsujimoto is analogous art.

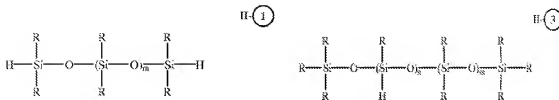
Thus, it follows that Appellants have not shown reversible error in the Examiner's finding that Tsujimoto is analogous art.

*Issue (2): If Tsujimoto is analogous art, then have Appellants shown reversible error in the Examiner's finding that Tsujimoto teaches a composition having a polyorganosiloxane as required by claim 1?*

Appellants argue that "[t]he elastomer of Tsujimoto et al. is a hydrocarbon rubber crosslinked by siloxanes using a hydrosilylation catalyst. One skilled in the art would realize that a hydrocarbon polymer crosslinked by siloxanes does not constitute, and is not analogous to, a polyorganosiloxane." (App. Br. 10). Appellants' argument is unpersuasive.

The Examiner relies on Tsujimoto's crosslinking agent *prior* to its reaction to form an elastomer composition to meet the polyorganosiloxane feature recited in claim 1 and not on Tsujimoto's elastomer composition. (Ans. 4).

In this regard, Tsujimoto teaches two different structures, which are known to be silicone structures, each functioning as a crosslinking agent in Tsujimoto's elastomer composition:



(FF 4). Tsujimoto states that the R group "preferably is a methyl group," which is known as  $-\text{CH}_3$ , and that "m varies from 1 to 100," where the repeated structural unit m is known to designate the length of the polymer chain. (FF 4).

Thus, Tsujimoto, like Appellants, teaches that these crosslinking agents may be methyl silicone compositions. (FF 1, 4). In addition, Tsujimoto, like Appellants, teaches that both of these crosslinking agents have the repeating unit  $[(\text{CH}_3)_2\text{SiO}]$ . (FF 1, 4).

Therefore, because Tsujimoto's crosslinking agents are identical to Appellants' polyorganosiloxane, we agree with the Examiner's determination that Tsujimoto teaches a composition having a polyorganosiloxane as recited in claim 1.

The burden properly has been shifted to Appellants to present persuasive arguments or evidence refuting the Examiner's prima facie case of obviousness.

*Issue (3): If Tsujimoto is analogous art and teaches a composition having a polyorganosiloxane such that the combined teachings of Tsujimoto and Karrer would have rendered obvious the claimed composition having a polyorganosiloxane and hindered amine light stabilizer, then are Appellants' arguments and evidence sufficient to rebut the Examiner's prima facie case of obviousness?*

Appellants argue that

Appellants have explained in the specification why the present invention is unexpectedly useful as a light bulb coating material. Referring to paragraphs [0008]-[0009] the specification states:

Historically, HALS were not suggested for use with silicones because of the concern that amines will poison a cure

catalyst and thus inhibit the crosslinking reaction. Additionally, it has been believed that nonoxidative cycloreversion rather than oxidation is the predominant mode of polyorganosiloxane degradation at elevated temperatures. A HALS is an antioxidant. Cycloreversion is not influenced by oxygen. Hence, it has been believed that antioxidant HALS would be ineffective with polyorganosiloxanes.

Surprisingly, it has been found in accordance with the present invention that organopolysiloxane compositions can be stabilized with a HALS, or a modified HALS. While applicants do not intend to be bound by the following explanation, it is believed that both cycloreversion and oxidation occur simultaneously at elevated temperatures. However, oxidation appears to be the predominant mechanism at temperatures greater than 185°C. in an atmosphere containing oxygen. These conditions are the usual conditions for use of polyorganosiloxanes as a bulb coating.

(Reply Br. 8).

Thus, it appears that Appellants allege that the resulting composition having a polyorganosiloxane and HALS provide unexpected results.

Appellants, however, do not direct us to any persuasive factual evidence supporting their allegation of unexpected results. *Beattie*, 974 F.2d at 1313. For example, the Specification states that it was believed that "amines will poison a cure catalyst and thus inhibit the crosslinking reaction" and that "[c]ycloreversion is not influenced by oxygen." (FF 2). However, Appellants have not directed us to any persuasive factual evidence supporting this opinion evidence. As such, this opinion evidence carries little weight.

In addition, we find Appellants' showing of unexpected results is not reasonably commensurate in scope with the degree of protection sought by claim 1. For example, while Appellants' showing in the Specification states



that "HALS were not suggested for use with silicones because of the concern that amines will poison a cure catalyst and thus inhibit the crosslinking reaction," claim 1 is not limited to admixing the HALS prior to curing. (FF 2). Indeed, the Specification discloses that "[t]he HALS . . . may be admixed prior to curing or subsequent to curing to form the composition of the present invention." (FF 2). Thus, we find that Appellants' showing is not reasonably commensurate in scope with the claimed invention.

Thus, it follows that Appellants' arguments and evidence are not sufficient to rebut the Examiner's *prima facie* case of obviousness.

Accordingly, based on the factual findings set forth in the Answer and above, we determine that the preponderance of evidence weighs most heavily in favor of obviousness of the subject matter defined by claims 1 and 33 within the meaning of 35 U.S.C. § 103.

*Claim Group (2): Claim 14*

Appellants argue that "the Tsujimoto et al. composition results from the hydrosilylation of a (pre-crosslinked) non-silicon containing alpha-olefin hydrocarbon copolymer with an organohydrogensiloxane. The result is a completely different composition than that of Appellants' claim 14." (App. Br. 12). Appellants' argument is unpersuasive. As stated above, the Examiner relies on Tsujimoto's crosslinking agent *prior* to its reaction to form an elastomer composition and not on Tsujimoto's elastomer composition to meet the recited polyorganosiloxane. (Ans. 4).

Tsujimoto's crosslinking agents are identical to Appellants' polyorganosiloxane. In this regard, Tsujimoto, like Appellants, teaches its

crosslinking agents may be methyl silicone compositions. (FF 1, 4). In addition, Tsujimoto, like Appellants, teaches that its crosslinking agents have the repeating unit  $[(CH_3)_2SiO]$ . (FF 1, 4).

Therefore, because Tsujimoto's crosslinking agents are identical to Appellants' polyorganosiloxane, we agree with the Examiner's determination that Tsujimoto teaches a composition having a polyorganosiloxane formed from the ingredients recited in claim 14.

In addition, Appellants reiterate their arguments made with respect to claim 1. (App. Br. 12). Thus, for the reasons set forth in the Answer and above, we affirm the Examiner's decision rejecting claim 14 under 35 U.S.C. § 103(a).

Thus, it follows that Appellants have not shown reversible error in the Examiner's determination that Appellants' polyorganosiloxane formed from the ingredients recited in claim 14 is not patentably different from Tsujimoto's crosslinking agents.

Accordingly, based on the factual findings set forth in the Answer and above, we affirm the Examiner's decision rejecting claim 14 under 35 U.S.C. § 103(a).

*Claim Group (3): Claim 18*

Appellants argue that "none of the R groups is disclosed as being a vinyl group. Accordingly, the linear organohydrogen siloxanes of Tsujimoto et al. are not vinylsiloxanes or equivalent thereto. Also, as stated above, the vinylsilanes of column 8 of Tsujimoto et al. are not vinylsiloxanes or equivalent thereto." (Reply Br. 7). Appellants' argument is unpersuasive.

As stated above, the Examiner relies on Tsujimoto's crosslinking agent *prior* to its reaction to form an elastomer composition and not on Tsujimoto's elastomer composition to meet the recited polyorganosiloxane. (Ans. 4).

In addition, Tsujimoto's crosslinking agents are identical to Appellants' polyorganosiloxane. In reference to our above discussion, Tsujimoto, like Appellants, teaches its crosslinking agents may be methyl silicone compositions. (FF 1, 4).

Also, Tsujimoto teaches that the formulas for its crosslinking agents share the same repeating unit  $[(CH_3)_2SiO]$  as the recited vinylsiloxane fluid. (FF 1, 4). In this regard, the recited vinylsiloxane fluid has the repeating unit  $[(R_1)_2SiO]$ , where  $R_1$  may be an alkyl radical having one carbon atom, which is known as a methyl group and has the formula  $-CH_3$ . Stated differently, the claimed vinylsiloxane is merely a reactant used to form the polyorganosiloxane; it is not present as vinylsiloxane in the final polyorganosiloxane.

Therefore, because Tsujimoto's crosslinking agents are indistinguishable from Appellants' polyorganosiloxane, we agree with the Examiner's determination that Tsujimoto teaches a composition having a polyorganosiloxane formed from the vinylsiloxane fluid recited in claim 18.

In addition, Appellants reiterate their arguments made with respect to claim 1. (App. Br. 13). Thus, for the reasons set forth in the Answer and above, we affirm the Examiner's decision rejecting claim 18 under 35 U.S.C. § 103(a).

Thus, it follows that Appellants have not shown reversible error in the Examiner's determination that Appellants' polyorganosiloxane formed from the vinylsiloxane fluid recited in claim 18 is not patentably different from Tsujimoto's crosslinking agents.

Accordingly, based on the factual findings set forth in the Answer and above, we affirm the Examiner's decision rejecting claims 18 and 19 under 35 U.S.C. § 103(a).

*Claim Group (4): Claim 34*

Appellants argue that

the Tsujimoto et al. composition is moisture cured. The composition of the present invention is cured by heat. There is nothing in Tsujimoto to suggest Appellants' heat curing composition. Tsujimoto et al. requires the presence of hydrolysable silane groups (e.g. alkoxysilane groups) to facilitate crosslinking with water. The composition of the present invention does not require alkoxy groups and is not moisture cured.

(App. Br. 13).

We disagree. Tsujimoto teaches its elastomer composition is cured in boiling water at 100° C. (FF 3). In other words, Tsujimoto cures its elastomer composition via heated water. (FF 3).

Thus, because Tsujimoto uses heated water to cure its elastomer composition, we determine that Tsujimoto teaches a composition that is cured by heating as required by claim 34.

Thus, it follows that Appellants have not shown reversible error in the Examiner's determination that Tsujimoto teaches a composition that is cured by heating as required by claim 34.

Accordingly, based on the factual findings set forth in the Answer and above, we affirm the Examiner's decision rejecting claim 34 under 35 U.S.C. § 103(a).

#### ORDER

Therefore, based on the Factual Findings set forth in the Answer and above, we affirm the § 103(a) rejection of claims 1, 14, 18, 19, 33, and 34 over the combined disclosures of Tsujimoto and Karrer.

Accordingly, the decision of the Examiner is affirmed.

#### TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v)(2008).

#### AFFIRMED

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